

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPLAINT OF RANDALL EHRLICH

Docket No. C2020-1

**UNITED STATES POSTAL SERVICE'S OPPOSITION
TO COMPLAINANT'S MOTION TO EXPAND ISSUES**
(May 20, 2020)

Complainant, Randall Ehrlich, filed a motion to expand the issues in this matter ("Motion to Expand") on May 12, 2020, which was accepted as filed by the Postal Regulatory Commission ("Commission") on May 13, 2020.¹ The United States Postal Service ("Postal Service") opposes Complainant's Motion to Expand and respectfully requests that the Commission deny it in its entirety because Complainant's motion is contrary to the very clear ruling on the scope of this proceeding made by the Commission in its Order No. 5455.² In addition, expanding the issues to be considered by the Commission is unnecessary since the Postal Service is attempting to resolve the underlying issue in this dispute by taking steps to permanently restore mail delivery to the front porch mailbox at Complainant's residence,³ as Complainant specifically requested in his complaint.⁴ For all of these reasons, the Commission should deny Complainant's Motion to Expand Issues.

¹ Complainant's Motion to Expand Issues, May 12, 2020; accepted May 13, 2020.

² Order No. 5455, Order Denying Postal Service Motion to Dismiss Complaint and Notice of Limited Formal Proceedings, March 17, 2020.

³ The Postal Service has in fact already begun this mail delivery restoration effort on a preliminary basis as part of a safety inspection. See Part II below.

⁴ Complaint of Randall Ehrlich, December 23, 2019 ("Complaint"), p. 14 at Paragraph VI.A.

ARGUMENT

I. EXPANSION OF THE ISSUES IN THIS PROCEEDING WOULD BE INCONSISTENT WITH ORDER NO. 5455.

The very title of the Commission's Order No. 5455 reflects its unambiguous determination of the proper scope of this proceeding: it is styled, in part, as a "Notice of *Limited* Formal Proceedings" (emphasis added). Over the past year and a half, this dispute, in the form of two separate complaints⁵ before the Commission, has resulted in the filing of dozens of pages of pleadings, exhibits, and declarations by both Parties, in addition to two information requests from the Commission's Chairman and responses thereto by the Postal Service. The Commission had the opportunity to review these materials in deciding on the content of its Order No. 5455, and that order, which references several of these materials, is a clear indication that it did in fact do so. The result of the Commission's review, Order No. 5455, has established a limited scope of inquiry for this proceeding; Complainant's Motion to Expand is wholly inconsistent with that limited scope.

In its order, the Commission found that the pleadings raised issues relevant to whether the Postal Service acted inconsistently with 39 U.S.C. § 403(c) by unreasonably discriminating against Complainant.⁶ Specifically, the Commission identified only five necessary issues to resolve the question of whether the Postal Service discriminated against Complainant in violation of 403(c): whether any dogs remain at Complainant's residence, whether the Postal Service's continuing dog hold

⁵ See Docket Nos. C2019-1, Complaint of Randall Ehrlich, November 2, 2018, and C2020-1, *supra*.

⁶ Order No. 5455 at 7.

was administered in a non-discriminatory manner, and three issues concerning the location and features of a mailbox at Complainant's property.⁷

By contrast, Complainant's proposed expanded issue no. 6 contemplates a review of the Seattle District's Animal/Insect Policy that would require the Postal Service to perform a complex, detailed analysis of every dog for which a dog hold is contemplated. To consider each such dog's "age, sex, size, breed composition, sterilization status,"⁸ etc., would be unduly burdensome and require the acquisition of expertise from breeders, veterinarians, or similar experts. This would represent an unreasonable burden on an agency whose mission is to safely and efficiently deliver the nation's mail. Adding such an issue to this proceeding would also embroil the Commission in micromanagement of one small aspect of the Postal Service's operations occasioned solely by a challenge to delivery operations at a single delivery point. It would be both an excessive expansion of the issues on its face and inconsistent with the scope of this proceeding as already determined by the Commission in Order No. 5455.

By proposing issue no. 6, Complainant also asks the Commission to consider whether the Seattle District's Animal/Insect Policy unlawfully "discriminates against postal customers without air conditioning or those who simply wish to enjoy a natural breeze inside their dwelling instead of artificially cooled air [...]."⁹ However, Complainant has not sufficiently pleaded facts that may raise a cognizable claim of undue or unreasonable discrimination against postal customers in Seattle, Washington

⁷ *Id.* at 8.

⁸ Motion to Expand, *supra*, at 1.

⁹ *Id.* at 2.

or in other districts throughout the country. It is well-established that “the Postal Service may provide different levels of delivery service to different groups of mail users so long as the distinctions are reasonable.”¹⁰ In the *Goodman* proceeding, which also involved a dog owner, the Commission concluded that “the Postal Service may differentiate among customers where the differences have a rational basis.”¹¹ Here, the rational basis for the Seattle District’s Animal/Insect Policy is to ensure letter carriers’ safety¹² by minimizing the risk of dog bites and/or attacks on postal employees.

Complainant has not offered any evidence to suggest that the Postal Service provides more favorable mail delivery service conditions to Seattle customers with air conditioning over those without it. Quite the contrary, the Seattle District’s Animal/Insect Policy applies to all Seattle customers, those with or without air conditioning in their residences. Therefore, it is unnecessary for the Commission to consider proposed issue no. 6 when determining whether a 39 U.S.C. § 403(c) violation occurred. This is further buttressed by the fact that the Commission found “good cause to waive the appointment of an officer of the Commission designated to represent the interests of the general public [...] because the violations alleged in the Complaint pertain solely to Complainant, who is represented by counsel, and not to the general public.”¹³ Order No. 5455 demonstrates that the Commission considered the general public’s interests, but decided that the alleged violations pertained only to Complainant and not the public-at-large. Complainant’s dissatisfaction with the five issues the Commission identified is

¹⁰ *Egger v. USPS*, 436 F. Supp. 138 (W.D. Va. 1977).

¹¹ Docket No. C2015-2, *In the matter of James D. Goodman and Rosalyn Goodman*, Order Granting Motion to Dismiss, July 15, 2015, (Order No. 2585).

¹² The Commission “recognizes that the Postal Service has a legitimate interest in ensuring mail carrier safety and providing a work environment consistent with OSHA regulations.” Order No. 5455 at 7.

¹³ *Id.* at 8.

insufficient justification to expand the issues or convert this complaint into a national service inquiry.

Order No. 5455 also does not contemplate micromanagement by the Commission of the Postal Service's reasonable, discretionary determinations concerning mail carrier safety and the necessity of dog holds. By contrast, Complainant's proposed issue nos. 7 and 8 would require the Commission to determine whether the "presence of or supervision by the customer" (issue no. 7) or a "gate or secondary barrier" (issue no. 8) negates the Postal Service's determination that a dog hold is reasonably necessary for letter carriers' safety. For the Commission to delve into this level of detail would be unproductive for the same reasons noted above concerning proposed issue no. 6: under issue no. 7, the Commission (and hence, the Postal Service going forward for any future dog hold) would need to evaluate the extent of the customer's dog training and physical strength in restraining his or her dog, while issue no. 8 would require expertise in the various grades of gates or other barriers: Can the gate restrain a dog of the particular size and strength in question? Is a "baby gate" sufficient to do so? Having to ask these sorts of detailed, technical questions, as part of an evaluation of the necessity of a dog hold – which is what Complainant's Motion to Expand would require – is simply not a reasonable requirement to impose on Postal Service operations in the context of a complaint proceeding.

It is also important to note what the Commission did not find in its order: "the Commission's role in this inquiry is not to question [...] the Postal Service['s] legitimate

interest in ensuring mail carrier safety [...].”¹⁴ By contrast, Complainant has proposed issue no. 9 as, in effect, an employment review of one letter carrier’s behavior. Even accepting as true the broad, overgeneralized allegations raised by Complainant in his multiple pleadings and declarations, including his most recent Motion to Expand (e.g., “destructive behavior”), the issue before the Commission in this proceeding is whether the Postal Service, as an organization, has unreasonably discriminated against Complainant in issuing and maintaining a dog hold.¹⁵ Part of the reasonableness of the Postal Service’s determination, by necessity, involved consideration of the letter carrier’s safety and prevention of a threat or attack from an aggressive dog or dogs at Complainant’s residence. Put another way, it is the Postal Service’s dog hold determination, not the letter carrier’s behavior, which is at issue before the Commission, as it has already determined in Order No. 5455.

II. EXPANSION OF THE SCOPE OF THIS PROCEEDING IS UNNECESSARY, AS THE POSTAL SERVICE IS UNDERTAKING TO RESTORE MAIL DELIVERY TO COMPLAINANT’S RESIDENCE.

Expanding the issues in this matter would also serve no purpose, since the Postal Service is in the process of restoring mail delivery to Complainant’s front porch mailbox: the precise relief Complainant is seeking in his complaint,¹⁶ and the basis for the five outstanding issues of fact identified by the Commission in Order No. 5455. Mail delivery service to Complainant’s front porch mailbox was suspended because Complainant’s dogs were at the screen door aggressively barking while the letter carrier

¹⁴ *Id.* at 7.

¹⁵ This issue may well become moot in the very near future, as the Postal Service is taking steps to restore mail delivery to Complainant’s front porch mailbox, as explained to both Complainant and the Presiding Officer. See Part II below.

¹⁶ Complaint, p. 14 at Paragraph VI.A.

was present, causing the letter carrier to fear for her safety. However, as of May 8, 2020, mail delivery has been restored to Complainant's front porch mailbox pending the outcome of management's two-week safety investigation. During this two-week period, management is delivering Complainant's mail and assessing the presence of any current safety hazards that may pose a threat to the letter carrier's safety. Both Complainant and the Presiding Officer are aware of these efforts, as detailed in letters to Complainant dated April 29, 2020, and May 7, 2020, from the Manager, Customer Services, at the Ballard Carrier Annex. Copies of these two letters are attached to this Opposition pleading as Exhibit 1.¹⁷

The issues in controversy in this proceeding are on the cusp of becoming moot, if local management determines that mail delivery can be permanently restored to Complainant's front porch mailbox. Thus, expanding the issues, as Complainant proposes, would seriously frustrate the Postal Service's efforts to unilaterally and amicably resolve this Complaint without further commitment of the Commission's or the Parties' resources, and would be inconsistent with administrative economy.

CONCLUSION

For the reasons set forth above, the Commission should deny Complainant's Motion to Expand Issues in its entirety.

¹⁷ As the two letters in Exhibit 1 indicate, the Postal Service has offered Complainant the opportunity to complete a *Change of Address (COA) Order*, PS Form 3575, so that Complainant can receive all of his mail at his residence. A Postal Service manager has been stopping at Complainant's front porch mailbox on each delivery day since May 8, 2020, delivering any available Marketing/Occupant Mail, and checking Complainant's mailbox for any outgoing mail. Assuming no safety issues are encountered during this two-week safety inspection period, the Postal Service will restore mail delivery to Complainant's front porch mailbox on a permanent basis. Again, this restoration is the precise relief Complainant seeks in his complaint.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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May 20, 2020

EXHIBIT 1 TO THE UNITED STATES POSTAL SERVICE OPPOSITION TO
COMPLAINANT'S MOTION TO EXPAND ISSUES



c/o Adam P. Karp, Esq., via email: adam@animal-lawyer.com

April 29, 2020

Mr. Randall Ehrlich
5833 7th Avenue NW
Seattle, WA 98107-9998

Re: Restoration of Mail Delivery Service Pending Safety Investigation

Dear Mr. Ehrlich:

This letter is to notify you that mail delivery service is being restored to your residential address pending the outcome of a safety investigation. A management official from the Ballard Carrier Annex will deliver mail addressed to 5833 7th Avenue NW, Seattle, WA 98107-9998 ("delivery address") for fourteen (14) days to assess the presence of any current safety hazards, such as threatening behavior from any animal(s) at the delivery address, that may pose a threat to the letter carrier's safety.

During the two-week assessment period, if management observes any safety hazards or threatening behavior from any animal(s) at the delivery address, the dog hold will continue and mail delivery service will be suspended. However, if management does not observe any safety hazards or threatening behavior from any animal(s) at the delivery address, the dog hold will be terminated and mail delivery service will permanently resume at the delivery address. Please be aware that if, after mail delivery service has resumed, any safety hazards are subsequently alleged or threatening behavior from any animal(s) at the delivery address is reported, a temporary dog hold will issue for the delivery address until management investigates to determine if a safety hazard or a good faith basis exists to discontinue mail delivery service.

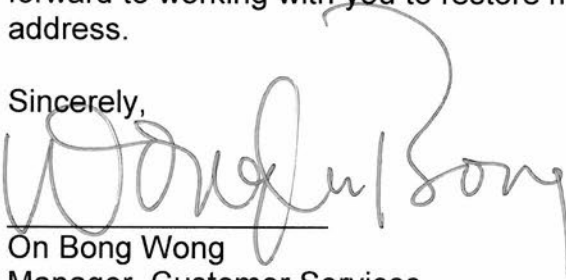
To facilitate the restoration of mail delivery service to your residential address, please complete and return the enclosed PS Form 3575, *Official Mail Forwarding Change of Address (COA) Order* to me at the address in the footer below within seven (7) calendar days of the date of this letter. Alternatively, if you prefer, you may complete the Online COA and submit it electronically using the online tool available at: <https://moversguide.usps.com/mgo/disclaimer>. To complete the Online COA, you will need a valid email address and a valid debit or credit card for the \$1.05 identity validation fee.

If your mail is addressed to a receptacle other than a PO Box™ at a Post Office™, such as a private mailbox or receptacle owned or operated by a Commercial Mail Receiving Agency (a private business that acts as the mail receiving agent), please notify each mailer of the delivery address so that mail can be sent to your residential address.

Once I receive the completed COA Order or you notify me, within seven (7) calendar days of the date of this letter, that you have completed the Online COA, it will be processed and mail delivery service will resume pending the outcome of management's safety investigation. I will notify you, in writing, of the outcome of management's safety investigation and let you know if mail delivery service can be safely restored to the delivery address.

Please feel free to contact me directly at (206) 781-0148 should you have any questions or need to further discuss. I appreciate your cooperation and look forward to working with you to restore mail delivery service at your residential address.

Sincerely,

A handwritten signature in dark ink, appearing to read 'On Bong Wong', written over a horizontal line.

On Bong Wong
Manager, Customer Services

Enclosure: PS Form 3575, *Official Mail Forwarding Change of Address Order*

cc: Anthony F. Alverno
Chief Counsel, Global Business and Service Development
United States Postal Service

Adam P. Karp, Esq.
Attorney for Randall Ehrlich



c/o Adam P. Karp, Esq., via email: adam@animal-lawyer.com

May 7, 2020

Mr. Randall Ehrlich
5833 7th Avenue NW
Seattle, WA 98107-9998

Re: Restoration of Mail Delivery Service

Dear Mr. Ehrlich:

This letter follows up on my letter dated April 29, 2020, wherein I notified you that mail delivery service was being restored to your residential address pending the outcome of a safety investigation. In that letter, I requested that you complete and return a PS Form 3575, *Official Mail Forwarding Change of Address (COA) Order* or notify me that you completed an Online COA Order within seven (7) days of the date of the letter.

Although I have not received a completed COA Order from you or notification that you completed an Online COA Order, beginning on May 8, 2020, a management official from the Ballard Carrier Annex will deliver Occupant/Marketing Mail addressed to 5833 7th Avenue NW, Seattle, WA 98107-9998 to the mailbox located on your front porch for fourteen (14) days to assess the presence of any current safety hazards, such as threatening behavior from any animal(s) at your delivery address, that may pose a threat to the letter carrier's safety. If you would like to have all of your mail delivered to your residential address, please complete a COA Order, and also notify mailers of your residential address if your mail is addressed to a receptacle other than a PO Box™ at a Post Office™, such as a private mailbox or receptacle owned or operated by a Commercial Mail Receiving Agency.

I will notify you, in writing, of the outcome of management's safety investigation and let you know if mail delivery service can be permanently restored to the mailbox located on your front porch. Please feel free to contact me directly at (206) 781-0148 should you have any questions or need to further discuss.

Sincerely,

A handwritten signature in black ink, appearing to read "On Bong Wong".

On Bong Wong
Manager, Customer Services

cc: Anthony F. Alverno
Chief Counsel, Global Business and Service Development
United States Postal Service

Adam P. Karp, Esq.
Attorney for Randall Ehrlich